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SUBJECT: SUCCESS! NIKE WINS IN CONSTITUTIONAL COURT

REF: A. 2002 MADRID 2134

[1](#)B. 2003 MADRID 780

[1](#)1. (SBU) SUMMARY: After more than 14 years of court battles, Nike has won a major victory in the Spanish Constitutional Court that once again allows the company to use its trademark (both the name and the swoosh) on apparel sold in Spain. On February 16, in response to Nike's appeal of a negative 1999 Supreme Court ruling, the Spanish Constitutional Court sided with Nike, annulling the other court's decision. It returned the decision to the Supreme Court asking that it revise its decision based on the findings of Constitutional Court justices. Nike is hoping that the new Supreme Court ruling, expected to be issued within the next 12 months, will be fair and objective. They fear the new decision could be colored by an ongoing battle for power between the two Spanish courts. END SUMMARY

[1](#)2. (SBU) For over fourteen years, Nike has been pursuing a former Spanish business partner, Cidesport, in court in an attempt to gain control of the Nike trademark in Spain. The problem stems from Cidesport's surreptitious acquisition in 1981 of a trademark containing the Nike name. Nike neglected to register its own trademark at that time. After several unsuccessful attempts to negotiate a settlement, Nike finally began litigation at the end of 1989. Nike was successful with a string of lower court case victories, but in 1999 lost a decisive appeal in the Civil Chamber of the Spanish Supreme Court. (Note: The court has a Civil and an Administrative Chamber.) The Supreme Court decision allowed the former business partner to sell clothing in Spain with the Nike name. Nike was also allowed to sell clothing, however, the clothing could not bear the name Nike --- only the swoosh.

[1](#)3. (SBU) Nike was successful in convincing the Spanish Constitutional Court to accept an appeal of the Supreme Court decision. The case had been pending over 3 years -- an unusually long wait, partly due to the serious illness and subsequent death of the justice assigned to the case. In the interim, the Supreme Court issued other rulings harmful to Nike including a 2002 Administrative Chamber ruling that took the 1999 decision one step further and gave Cidesport the right to use a "Nike Sportswear" logo on both footwear and apparel.

[1](#)4. (SBU) On February 16, 2004, the Constitutional Court finally reached a decision favoring Nike. The Constitutional Court annulled the Supreme Court's prior rulings, outlined the various legal errors made by the Supreme Court, and sent the 1999 decision back to the Supreme Court for a new and "properly reasoned" decision. Industry insiders estimate it will likely take a year for the Supreme Court to issue a new decision, though some "returned cases" have been considered in just a matter of weeks. In the meantime Nike has regained use of its entire logo, both name and swoosh. Nike lawyers and officials are cautiously optimistic. They say the Constitutional Court's decision reflected a good part of the reasoning they had used in their legal brief. They are hoping the Supreme Court response will be objective.

[1](#)5. (SBU) One final twist in the Nike case involves an inter-court struggle for power between the Constitutional Court and the Supreme Court that has been going on for years. In at least one example in the past few years, the Supreme Court took umbrage that the Constitutional Court returned a decision for reconsideration. The Supreme Court revised its decision, but did so in a way that met the Constitutional Court's requirements, but essentially gutted the victory. Tensions between the two courts escalated this month when the Supreme Court accused the Constitutional Court of a judicial misstep and humiliated the justices by requiring them to pay restitution to a local lawyer.

[1](#)6. (SBU) The 1999 Supreme Court decision barring Nike from selling clothes with its logo in Spain has cost the company tens of millions of dollars in separate production runs and lost sales. Throughout the legal struggle, the company has asked us on numerous occasions to advocate on their behalf to various GOS ministries. While we have not wanted to interfere in independent judicial proceedings, we have on many occasions spoken and written to various GOS officials to underscore the importance of intellectual property rights and the negative implications of Nike's ongoing court troubles. This week, in view of the latest judicial ruling, we have been delicately asking relevant contacts if they believe the inter-court feud could prejudice the final Nike Supreme Court

ruling.
MANZANARES